

Priority Claim

A copy of PCT/SE02/01071 is included herewith, as is a certified copy of Swedish application 0101949.6, thereby perfecting the present Application's priority claim (see relevant portion of 1895.01 immediately below):

1895.01 Handling of and Considerations In the Handling of National Applications Under 35 U.S.C. 371 and 35 U.S.C. 111(a) Continuations and Continuations-In-Part of a PCT Application

CONTINUATION, CIP, OR DIVISION OF INTERNATIONAL APPLICATION FILED UNDER 35 U.S.C. 111(a)

Rather than filing a national stage application, a continuing application (*i.e.*, continuation, C-I-P, or division) under 35 U.S.C. 111(a) of the international application may be filed. Pursuant to 35 U.S.C. 365(c), a regular national application filed under 35 U.S.C. 111(a) and 37 CFR 1.53(b) (not under 37 CFR 1.53(d) or former 37 CFR 1.60 or 1.62) may claim benefit of the filing date of an international application which designates the United States.

A typical time line involving a continuing application filed during the pendency of an international application is illustrated as follows:

The continuing application must be filed before the international application becomes abandoned as to the U.S. as set forth in 37 CFR 1.494 and 1.495. An appropriate sentence (such as "This is a continuation of International Application PCT/EP90/00000, with an international filing date of January 4, 1990, published in English under PCT Article 21(2) and now abandoned.") must appear in the first sentence of the specification. In addition, all other conditions of 35 U.S.C. 120 (such as having at least one common inventor) must be satisfied. ***A copy of the international application (and an English translation) may be required by the examiner to perfect the claim for benefit under 35 U.S.C. 120 and 365(c) if necessary, for example, where an intervening reference is found and applied in a rejection of one or more claims.***

A claim for foreign priority under 35 U.S.C. 119(a)-(d) must be made in the continuing application in the same manner as a claim for foreign priority under 35 U.S.C. 365(b) in a national stage application. In the same manner as with a national stage application, a foreign priority claim is proper if (1) a claim for foreign priority was made in the international application, and (2) the foreign application was filed within 12 months prior to the international filing date. A certified copy of any foreign priority document must be provided by the applicant if the parent international application has not entered the national stage under 35 U.S.C. 371 (the photocopy received from the International Bureau cannot be used). If the parent international application has entered the national stage under 35 U.S.C. 371, the applicant, in the continuing application, may state that the priority document is contained in the national stage application.

Rejection of Claims for Alleged Obviousness Type Double Patenting:

The Office Action includes provisional rejection of Claims 1-5 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2 and 7-10 of co-pending Application No. 10/707334. Applicants submit that the provisional rejection is inappropriate for at least the following reasons:

To avoid joinder of inventions in a single application, 37 CFR 1.141(a) requires that, “Two or more independent and distinct inventions may not be claimed in one national application, - - .” Knowledge of this restriction led to the filing of two applications identified herein by application number 10/707,332 for the present application and application number 10/707,334 that is alleged to contain conflicting claims.

Giving consideration to 35 U.S.C. §101, which has been interpreted as limiting an inventor to only one patent per invention, and 37 CFR 1.141(a) that further emphasizes this requirement, the evidence shows that subject matter claimed by the 10/707,332 application is patentably distinct from that claimed by the 10/707,334 application for at least the following reasons:

1. The 10/707,334 application claims “control of a cooling fan” according to claim 2.
2. Claims 7 - 10 have dependency from claim 2 to address control of the cooling fan at a time when pressure measurements are used to establish the operating condition of the compressor. Although claims 7 - 10 include determination of the operating condition of the compressor and control of the cooling fan to occur together, these system functions are independent of each other.
3. The limitations of claims 7 - 10 operate together with control of the cooling fan, but the claimed invention of the 10/707,334 application still focuses on cooling. This application does not include a claim exclusively addressing a compressor system that has a control member using pressure measurement to establish the operating condition of the compressor. If it included such a claim the 10/707,334 application would violate 35 U.S.C. §101 and 37 CFR 1.141(a).
4. The 10/707,332 and 10/707,334 applications respectively claim a first invention corresponding to a compressor system using a control member responsive to a pressure sensor to establish the operating condition of the compressor (10/707,332) and a second invention

controlling a cooling fan in response to a cooling requirement (10/707,334). Reliance on claims 2 and 7-10 of the 10/707,334 application would leave unclaimed the system that establishes whether or not the compressor is operating regardless of cooling requirements. Clearly these inventions are independent and distinct from one another and satisfy the definitions of “independent and distinct” according to MPEP 802.01. As indicated above, compliance with current laws and regulations requires separate applications to claim the subject matter of each independent and distinct invention.

The undersigned representative requests any extension of time that may be deemed necessary to further the prosecution of this application.

The undersigned representative authorizes the Commissioner to charge any additional fees under 37 C.F.R. 1.16 or 1.17 that may be required, or credit any overpayment, to Deposit Account No. 14-1437, referencing Attorney Docket No.: 0173.046.PCUS00.

In order to facilitate the resolution of any issues or questions presented by this paper, the Examiner may directly contact the undersigned by phone to further the discussion.

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